



**PECHANGA INDIAN RESERVATION**  
*Temecula Band of Luiseño Mission Indians*

Post Office Box 1477 • Temecula, CA 92593  
Telephone (951) 676-2768 Fax (951) 695-1778

January 27, 2010

Mr. Darrick Moe  
Desert Southwest Regional Manager  
Western Area Power Administration  
P.O. Box 6457  
Phoenix, AZ 85005-6457

Re: Comments of the Pechanga Band of Luiseño Indians;  
Boulder Canyon Project Post-2017 Marketing

Dear Mr. Moe,

Attached are the Comments of the Pechanga Band of Luiseño Indians on Western's Boulder Canyon Project Post-2017 Marketing Proposal. The Tribe appreciates the opportunity to provide these comments.

Very truly yours,

Mark Macarro  
Tribal Chairman

Cc: Donald M. Clary, Esq.

Tribal Chairman:  
Mark Macarro

Council Members:  
Mark Calac  
Corrina Garbani  
Marc Luker  
Andrew Masiel, Sr.  
Russell "Butch" Murphy  
Kenneth Perez

Tribal Treasurer:  
Christina "Tina" McMenamin

Tribal Secretary:  
Darlene Miranda

## Comments of the Pechanga Band of Luiseño Indians

### On the Western Area Power Administration's

### Notice of Proposal

### Boulder Canyon Project Post-2017 Marketing

The Pechanga Band of Luiseño Indians ("the Tribe" or "Pechanga") appreciates the opportunity to provide the following comments regarding the Western Area Power Administration's Notice of Proposal (Boulder Canyon Project—Post-2017 Application of the Energy Planning and Management Program Power Marketing Initiative), published in the Federal Register on November 20, 2009 ("Notice"). The Notice concerned the extension of the Power Marketing Initiative ("PMI") to the marketing of power from the Boulder Canyon Project ("BCP"). The Tribe believes that certain issues should be addressed and resolved as part of this proceeding.

### Introduction

The Tribe occupies a 5,500-acre reservation located near Temecula, California. It is a federally recognized Native American Tribe with governmental authority over its reservation, land and people. It has substantial business enterprises. In the summer of 1999, the Tribe's Development Corporation unveiled a five-year master plan calling for the construction of a permanent casino, hotel, meeting and convention center, 18-hole championship golf course, 170-space recreational vehicle resort, and a new maintenance-administration building. Together, these facilities complement surrounding tourist attractions, and help to develop southwest Riverside County as a major regional visitor destination. The Tribe has plans for further significant economic expansion.

The Tribe has made substantial efforts to provide for its energy future. These efforts include the construction of a modern 115 kv interconnection with the Tribe's enterprises, the operation of a 6.5 MW cogeneration plant, and securing an allocation of power from the Parker-Davis Project. Pechanga also anticipates applying for a portion of the post- 2017 BCP pool. The Tribe is managing its own energy resources and is planning to expand its capacity in this area, including the possibility of forming its own electric utility.

### Discussion

Western has requested comments regarding the applicability of: (i) the PMI to the BCP; (ii) the quantity of resources to be extended to existing contractors; (iii) the size of the proposed resource pool; (iv) excess energy provisions; (v) the term of contracts, and (vi) the role of the Colorado River Commission (CRC) and the Arizona Power Authority (APA) in this proceeding. The Tribe believes that, in dealing with these questions, Western should consider that the world has changed substantially from the nineties when the PMI was initially adopted, and that these changes need to be considered in the marketing of post-2017 BCP power.

### *Pending Legislation*

The Tribe is aware that legislation is currently pending in Congress that would address the BCP allocation process (S. 2891 and HR 4349). However, the Tribe does not believe that Congress is required to act on this matter (and therefore may choose not to do so). Therefore, it is prudent for Western to proceed with this process to provide for the marketing of BCP power post-2017. Even if Congress does act, this process will enable Western to consider the serious broader issues surrounding the marketing of BCP Power (particularly those relating to the protection of the rights of Native American Tribes), and enable them to anticipate and better address such issues in implementing any potential Congressional action.

### *The applicability of the PMI to the BCP*

The Tribe believes that the PMI can be applicable to the BCP, as long as certain modifications are implemented that correct problems that have been associated with the attempted integration by tribes of allocations from Western's other projects. In adopting the PMI, Western paid significant attention to Native American Issues and concerns [see 60 FR 54151, 54164-54167 (Oct. 20, 1995)]. Western considered such factors as the importance of direct allocations to tribes, and not requiring tribes to have obtained utility status prior to receipt of an allocation. Western also indicated that it would consider credits on power bills as one method to enable tribes to obtain the benefits of cost-based Federal power to such tribes.

In adopting the PMI, Western noted that there was a question as to how tribes being served by investor-owned utilities would be handled. While stating that rural electric cooperative customers had been cooperative in working with Western and the tribes on delivery arrangements, it was suggested that "[a] potential exists for the investor-owned utility community to resist comparable delivery arrangements based upon retail wheeling concerns." Western indicated that this issue "will be addressed during Program implementation." 60 FR 54165

Unfortunately, it has been the Tribe's experience that the absence of an adequate resolution to this concern (in the context of its Parker-Davis allocation) has led to the inability of the Tribe to directly integrate and fully utilize its allocation. After receiving its Parker-Davis allocation, the Tribe met with its local investor-owned utility, Southern California Edison ("SCE") to discuss the integration of its power. After several meetings and discussions, Edison informed the Tribe that it would be required to independently arrange for the integration of its entitlement with the California Independent System Operator (ISO), which would impose significant charges for the separate integration of the power. These charges, in addition to those that would have been added for the transmission service that SCE would (hopefully) have provided, substantially undermined any economic benefit that the tribe would received from its allocation.

As a result, the Tribe was required to enter a displacement arrangement with a third party. While Western was extremely helpful in facilitating this arrangement, the arrangement still deprived the Tribe of the significant operational advantages it would have received had it been able to directly integrate its allocation from Western. The Tribe believes that result is not only inconsistent with the Tribe's goals and objectives, but is also inconsistent with Western's expressed goal that Native American Tribes receive resource pool power *for use on the reservation*. 60 FR 54164

SCE is the only investor-owned utility that is a direct allottee receiving power from the BCP. SCE has been receiving BCP power for decades, and (under the proposed allocations for existing contractors) it can be presumed that it will continue to do so. Some of this power has been delivered to Pechanga (a retail customer of SCE). The value of this allocation to SCE is enormous. It is therefore appropriate for Western to impose reasonable requirements upon SCE at the time of the future extension of any such allocation in order to assure that Western's objectives are met.

Accordingly, it is the Tribe's position that, as a condition to applying the PMI and extending SCE's BCP allocation post 2017, SCE be required to (at the request of the tribe) integrate the allocation of any Native American Tribe geographically located within its service territory with its own allocation, and to implement scheduling arrangements with the ISO that will facilitate the actual delivery of the Tribes' allocations to their respective reservations. Such delivery is essential to the Tribes' actual use of the allocation (as part of their economic development) and to Western's expressed goal of Tribes actually receiving the allotted power at their reservation. Failure to follow this approach will only lead to major inefficiencies and impede the tribes' financial growth.

*The quantity of resources to be extended to existing contractors*

The Notice provides that Western proposes to extend 100 percent of the existing contractors' contingent capacity allocations, totaling 1,951 MW, and 95 percent of the proposed marketable firm energy, totaling 3,910,200 MWh annually to the existing contractors based proportionally upon their existing allocations of marketed annual firm energy. The Notice does not attempt to describe why this allocation is appropriate from a resource planning perspective, or explain any considerations that were made at arriving at these amounts. Indeed, it appears that Western merely started with the proposition that all current allocations should be renewed.

It is the Tribe's position that these amounts are unfair and excessive, in light of the substantial number and growth of entities that have not previously received allocations from the BCP. The requirements of these entities, including Native American Tribes, have dramatically increased in recent years, and will only continue to do so. It is unfair to prevent (by setting renewal allocations at inappropriately high levels) those who have been foreclosed from previously participating in this resource from making their case for an adequate allocation at this time.

Pechanga's economic growth is illustrative of such a case. Most of the substantial enterprises currently run by the Tribe did not exist in 1995, when the PMI was initially implemented. The Tribe has significant plans for future economic development, and availability of electrical energy at reasonable prices is an important part of this development. The Tribe is concerned that, if the allocations are set at the proposed levels it will be unable to obtain sufficient BCP power.

It should also be noted that the world has also changed dramatically since 1995. New transmission lines have been and will be under development. The development of new capabilities (such as distributed generation, renewable and smart grid technologies) will, in all probability, result in more players that will desire and be capable of utilizing BCP Power. These factors need to be publically considered in setting the quantity of resources to be extended to existing contractors.

Accordingly, it is the Tribe's position that Western should not start from presumption of renewal for all current allottees. Instead, all applicants should be permitted an opportunity to make their case for an allocation. To the extent that Western believes that, under the PMI it is obligated to renew some of the existing contracts, it should not start from an assumption of renewal, but should still properly analyze and assess the utilization of the potential allocations. Moreover, the methodology and analysis that has been applied by Western in establishing the proposed quantity available to current allottees should be disclosed and publicly evaluated prior to establishing this amount.

#### *The size of the proposed resource pool*

The Notice provides that this proposal would result in the creation of a single, one-time resource pool consisting of 93 MW of contingent capacity with an associated 205,800 MWh of annual firm energy.

The Tribe believes that the proposed resource pool is inadequate. Again, as with the proposed allocations to existing contractors, It would appear that the size of the resource pool has not been established based upon any analytical evaluation and consideration of the potential need of allottees in the geographical area, but based upon a simple calculation of the amount of power that would remain, premised upon the current equipment and operations of BCP, after the current allottees' contractual quantities are deducted from the total available from BCP.

For the same reasons stated in the previous response, this approach is inequitable. This approach is fundamentally unfair to those entities that were previously unable to apply for BCP power, and that have experienced significant increases in their need for such power. Such an approach also ignores technological changes that have occurred and which will continue to occur. Merely preserving the status quo, particularly without an analytical evaluation of

economic changes that could have substantially altered the appropriateness of the original allocations, is not a proper resolution of this matter.

#### *Excess energy provisions*

With regard to excess energy, it is the Tribe's position that, because Western is proposing to fully renew existing contractual arrangements with the current allottees (who have had substantial benefit from the resource for decades), it is only appropriate and equitable that a first right of refusal be offered to Native American Tribes (and other new preference applicants) for any excess energy that should become available.

#### *Term of contract*

The Notice proposes a thirty year term for the Agreements. The Tribe believes that this is a reasonable term for the purpose of planning and the efficiency of administration and to assure allottees of a reasonable period of benefit from the Project. However, the Tribe is opposed to any longer contractual period, as it believes that circumstances may change and that Western should retain the flexibility to accommodate such change (and allocate power where it is needed) in a time frame longer than thirty years.

#### *CRC and APA's Role*

Western has also requested comments regarding the role of the Colorado River Commission and the Arizona Power Authority, which are, under their respective State laws the designated agents for acquiring and remarketing BCP power within Nevada and Arizona respectively. As the Tribe is geographically located within California, it is not directly impacted by the question of CRC's and APA's status. However, the Tribe assumes that tribes located within Arizona and Nevada will comment on the fact that Native American Tribes are generally not subject to state jurisdiction. Accordingly, it may be necessary for Western to be directly responsible for marketing to tribes in these geographic locations.

The Tribe would appreciate it if, in the future, you would forward any communication regarding this matter to:

Donald M. Clary  
Attorney-at-Law  
284 Berkshire Ave  
La Canada Flintridge, Ca  
91011

Again, the Tribe appreciates the opportunity to provide these comments, and looks forward to participating with Western as it continues to market post-2017 BCP Power.